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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,481	12/11/2003	Jack Wasserman	672988/004	7694
7590 Steven B. Pokotilow Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, NY 10038		04/28/2008		
EXAMINER				
CUMARASEGARAN, VERN				
ART UNIT		PAPER NUMBER		
3629				
MAIL DATE		DELIVERY MODE		
04/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/733,481

Applicant(s)

WASSERMAN ET AL.

Examiner

VERN CUMARASEGARAN

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date 6/11/2007
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 recites the limitation "the first arrangement". There is insufficient antecedent basis for this limitation in the claim. Clarification on what is referred to by the first arrangement should be provided. Examiner interprets the claim to be that claims 2 and 11 do not have the step of providing consideration to seller or sellers.

Claims 14-18 and 24-27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 14, it is unclear who is receiving the financing. Regarding claim 24, it is unclear who is receiving the option and payment.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaiser (see PTO-892 U) in view of Galaty (see PTO-892 V).

As to claim 1, Kaiser shows receiving from the seller an option to purchase the property (paragraph 3). Kaiser does not expressly show the exclusive real estate listing

of the property. However, Galaty shows the exclusive real estate listing being for an exclusivity time period (page 79). It would have been obvious to one of ordinary skill in the art to incorporate the method of exclusive real estate listing into the method of Kaiser since doing so would be a mere combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As to claim 2, Kaiser shows providing consideration to the seller in return for receiving the exclusive real estate listing ("...we pay you \$500 cash"); and receiving return consideration from the seller if a sale condition for the property is met during the exclusivity time period (paragraph 8 where it's implied that when the property is listed with the agent ("when you list with me...") and the sale conditions such as a sale are met, the seller would pay the realtor a commission).

As to claim 3, Kaiser shows the consideration including an up-front payment to the seller (paragraph 8).

As to claims 4-6, Kaiser shows the sale condition being the sale of the house (paragraph 9), which would inherently include a bona fide offer and purchase contract.

As to claims 7-10, Kaiser shows receiving return consideration including receiving a refund of at least a portion of the consideration (paragraph 9 where if the house is sold, the seller does not get the \$500), and it would have been obvious to one of ordinary skill in the art to try the various return considerations since there are a finite number of identified return considerations.

As to claim 11, Kaiser shows providing consideration to a plurality of sellers (where since the consideration is being advertised to a plurality of sellers); receiving a refund from a group of plurality of sellers for which a corresponding sale condition is met (where because it is advertised to the public, more than one person would be providing a refund upon the completion of a sale when there are multiple listings). Kaiser does not expressly show receiving exclusive listing from plurality of users. Examiner takes official notice that it is old and well known in the art to receive exclusive listing from plurality of users. Therefore, it would have been obvious to one of ordinary skill in the art to modify Kaiser and include the method of receiving exclusive listing from plurality of users since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same functions as it did separately.

As to claims 12 and 13, examiner takes official notice that it is old and well known in the art to have various terms in the exclusive listing agreement. Therefore, it would have been obvious to one of ordinary skill in the art to modify Kaiser and include the various listing agreement terms since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same functions as it did separately.

As to claim 14, examiner takes official notice that it is old and well known in the art to receive financing from a financing agent such as a bank when purchasing a property. Therefore, it would have been obvious to one of ordinary skill in the art to modify Kaiser and include the various listing agreement terms since the claimed

invention is merely a combination of old elements, and in the combination each element merely would have performed the same functions as it did separately.

As to claim 15, Kaiser shows using financing (paying \$500) to provide consideration to the seller (paragraph 8).

As to claims 16-18, examiner takes official notice that it is old and well known in the art to provide various forms of payment for receiving financing. It would have been obvious to one of ordinary skill in the art to incorporate the method of receiving financing into Kaiser since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same functions as it did separately.

As to claims 19-21, examiner takes official notice that it is old and well known in the art to provide an option to purchase if the seller refuses to sell to a bona fide purchaser at a certain price.

As to claim 22, Kaiser shows exercising the option for purchase of property (paragraph 3). It would have been within the capabilities of one of ordinary skill in the art to continue the step by selling the property and remitting the proceeds to the seller with the predicted result of providing confidence to the seller that the property will be sold so that another property can be bought by the seller.

As to claim 23, examiner takes official notice that it is old and well known in the art to record liens on a property. It would have been obvious to one of ordinary skill in the art to incorporate the method of recording the option since the claimed invention is

merely a combination of old elements, and in the combination each element merely would have performed the same functions as it did separately.

As to claim 24, Examiner takes official notice that it is old and well known in the art to obtain financing before purchasing a property. Therefore, providing up front financing to a real estate agent would have been obvious to one of ordinary skill in the art. Galaty shows real estate agent having one or more exclusive listings from sellers for sale of property (page 79).

Galaty also shows option to transfer ownership in the property (page 81 "option listing").

Examiner takes official notice that it is old and well known in the art for seller to provide payments such as closing costs to a purchaser, who in turn pays his financing agent or bank. Therefore, incorporating the method of receiving from the real estate agent (purchaser) a portion of the payment (closing costs) would have been obvious to one of ordinary skill in the art since the claimed invention is merely a combination of known elements and in the combination each element merely would have performed the same functions as it did separately.

As to claim 25, examiner takes official notice that it is old and well known in the art to pay interest on a loan. Therefore, it would have been obvious to one of ordinary skill in the art to incorporate the method of receiving interest payments since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same functions as it did separately.

As to claims 26 and 27, Galaty shows option being received from seller and real estate agent (page 81).

As to claim 28, Galaty shows offering the seller a first arrangement wherein the real estate agent obtains the exclusive listing for the property and a first commission (page 79); offering the seller a second arrangement, wherein the real estate agent obtains the exclusive listing for the property, a second commission and an option to purchase the property, and wherein the seller receives consideration for providing the exclusive listing, the option and the consideration not being included in the first arrangement (page 81 "option listing").

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERN CUMARASEGARAN whose telephone number is (571)270-3273. The examiner can normally be reached on Monday - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vc

/John G. Weiss/
Supervisory Patent Examiner, Art Unit 3629